XII-188/(Jail)
J.P.R.—5,000

CF0000057508

CRA 1129 (2) 93

DB

APPEAL OF PRISONER

No. 334 Name गुलाब गुर्जर

Father's name ईश्वर लाल

Residence ग्रा. खेरी जि. राजुला Age 30 वर्ष

Sentenced to आजीवन कारावास on 17/6/93

Under section 302 भा.वि. by श्रीमान् अति. सेष न्यायाधीश अलवर

it is explained to the prisoner that if he states or wishes to be represented by a legal practitioner the Appelate Court will not proceed with the base for seven days unless the legal practitioner appears. If the legal practitioner does not appear with in seven days he may not be heard at all If the prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

1 Date of Application for copy of Judgement 17/6/93

2 Date of which copy received 17/6/93

3 Date on which Appeal sent 30/7/93

4 Whether the prisoner wishes to be represented or not – Yes/~~No.~~

High Court of Judicature, Rajasthan, Jodhpur
24-9-93
51 - Sp
No. 51
Seen
Record Clerk
High Court, Jodhpur

No. 80 Name गुलाब @ गुलाबी

Continued in 80 b Jail Bhar

No. 295 dated 30/7/93 98

Forwarded to the CHIEF JUDICIAL MAGISTRATE Amb Kajer

to gather with a copy of judgement or order passed in the case for favour of transmission to the proper Appilliate Court.

Superintendent-Central ~~District~~ Sub-Jail
भरतपुर

Date of receipt in C. J. M.'S Office 3.8.93

Date of receipt of record to accompany 9-9-93

Memo of Appeal of the Appeliate Court. मान. उच्च न्यायालय ज.प. जबलपुर

No. Dated 9-9-93 98

Forwarded to the उच्च न्यायालय ज.प. जबलपुर

C.J.Magistrate
मुख्य न्यायिक मजिस्ट्रेट
भरतपुर

Date of receipt in Appliate Court

(P.T.O.)

(19)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Cr.Appeal No.1129/1993

Gulab @ Gulabi

-Versus-

State of Madhya Pradesh (now Chhattisgarh)

J U D G M E N T

(20)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Cr.Appeal No.1129/1993

Gulab @ Gulabi

-Versus-

State of Madhya Pradesh (now Chhattisgarh)

CORAM: HON'BLE SHRI FAKHRUDDIN,
HON'BLE SHRI DILIP RAOSAHEB DESHMUKH, JJ

Ms. Sharmila Singhai with the accused appellant.

Shri Ravindra Agrawal, P.L.. for the State.

J U D G M E N T
(Delivered on 29.09.2005)

The following oral judgment of the Court was delivered by **Fakhruddin, J.**

This appeal is directed against the judgment dated 17.06.1993 passed by Shri R.P.Tihaiya, Addl. Sessions Judge, Manendragarh, District Surguja in Sessions Trial No.241/1992 whereby the appellant-Gulab @ Gulabi was convicted under Section 302 I.P.C. for committing murder of Jeevan Singh on 05.04.1992 at about 6.00 P.M. and was sentenced to imprisonment for life.

2. Briefly stated the prosecution story is that on 05.04.1992 at about 6 '0' clock in the evening deceased Jeevan Singh along with his wife Jai Kunwar (P.W.9) was returning from the market and on the way accused assaulted Jeevan Singh on his neck by a *Farsa* as a result thereof he died.

3. The prosecution story further unfolds that some days before the incident, the appellant had abused Jai Kunwar P.W.9 and outraged her modesty. On this, she had made complaint to her

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husband. On such complaint being made, the deceased had scolded the appellant. The appellant had the knowledge that Jeevan Singh had been to market along with his wife and will be back by evening. While the deceased was returning, the appellant lay in wait and assaulted the deceased by *Farsa*. On Jai Kunwar's cries, Naval Singh P.W.4, Baijnath Singh and Sukhdev Singh rushed the spot and saw that the deceased was done to death and the dead body was lying on the ground. Dhaneswar Singh P.W.3, father of the deceased, also reached the spot. Since it became dark night, the report was lodged on the next day i.e. 06.04.1992 at 8 '0' clock and an offence punishable under Section 302 of the I.P.C. has been registered as crime No. 22/1992. Thereafter, investigation commenced. Investigating Officer Asst. Sub-Inspector Bechu Singh P.W.11 reached the spot. Vide Ex.P.1 Panchanama was prepared. He seized the articles lying on the ground and recovered Rs.10/- vide Ex.P.2. Bloodstained soil and plain soil vide Ex.P.3 was seized. Dead body was sent to the post-mortem.

4. Dr. K. L. Banjare P.W.10 who conducted the autopsy found an incised wound which was present over front of neck extending 3 cm. above the left sternal end of clavicle downwards medially to sternal end of right and 2nd rib spindle shape size 5" x 2.2" x 2" and also found muscles of front of neck, arteries, veins and trachea completely cut. Trachea injured at 3rd tracheal ring size 1" in width 4 ½" in length. Fracture of right clavicle at sternal end and blood clots were present. In his opinion, cause of death was shock due to excessive haemorrhage and the death was homicidal in nature. The injuries were ante-mortem and could be caused by

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a hard and sharp object. Duration of death was within 2 to 3 days.

5. After completion of investigation, challan was filed. The prosecution examined as many as 11 witnesses. The evidence of P.W.9 has been corroborated by the testimony of Naval Singh P.W.4. In deposition he had stated that on being heard the screams of Jai Kunwar P.W.9 he rushed to the spot alongwith Baijnath Singh and Sukhdev and saw the dead body of Jeevan Singh lying on the ground and further stated that they asked Jai Kunwar as to whether she has recognized the assailant whereupon she told them that it was the appellant-Gulab who committed the murder of her husband.

6. The accused abjured the guilt, pleaded innocence and led no evidence in defence. The learned trial Judge relied on the testimony of the above witnesses and held the appellant guilty and convicted him as stated above.

7. Learned counsel for the appellant has mainly contended that there is no legal and reliable evidence on record to hold the appellant guilty. She has further contended that Jai Kunwar P.W.9 being the wife of the deceased was an interested witness. She has also contended in the alternative that the offence, if any, committed by the appellant would not travel beyond Section 304 Part II of the I.P.C. It is the further contention of the learned counsel for the appellant that Jai Kunwar P.W.9 was not able to identify the accused-appellant. Learned counsel for the appellant vehemently contended that there is no intention to cause death and the accused had given only one blow. On the other hand,

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learned counsel for the State has supported the judgment of the trial Court.

8. We have gone through the evidence of Jai Kunwar P.W.9 who had stated that prior to the incident she knew the appellant by face as well as name. On the fateful day, while they were returning from the market and had crossed the *Lohadiya* river, all of sudden she saw the accused-appellant coming from the front with a *Farsa*. As soon as he reached, her husband asked as to who he is and without giving any response thereto he gave a blow by *Farsa* on his neck and ran away leaving the *Farsa* at the place of occurrence. She has further deposed that one week before the occurrence when she had gone to fetch water from the *Naleh*, the accused had filthily abused her upon which she has scolded him and had also made a complaint to her husband. She has also stated in the cross-examination that after the incident she shouted and thereafter she felt disgusted because of the incident. She described the same to her father-in-law Dhaneswar Singh. Nothing has been elicited in the cross-examination of Naval Singh P.W.4 who rushed to the spot after hearing cries of Jai Kunwar along with Baijnath Singh and Sukhdev and saw a woman was crying and a dead body was lying on the ground. They asked as to who has killed whereupon she replied that the appellant-Gulab committed murder of her husband.

9. Having scanned the evidence led by the prosecution in its entirety and the facts and circumstances of the case, the manner in which the death of Jeevan Singh was caused by the accused by inflicting *Farsa* blow on the neck cutting the arteries, veins and

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trachea and also the muscles of front of neck of Jeevan Singh which instantaneously killing him, the requisite intention to cause the death of Jeevan Singh can safely be attributed to the appellant. We are therefore of the considered opinion that offence committed by the appellant squarely falls under Section 302 I.P.C.

10. In the result, there is no substance in this appeal which fails and is accordingly dismissed.

11. Before parting, we appreciate the assistance rendered by the learned counsel for the parties.

Sd/-
Fakhruddin
Judge
29.9.2005

Sd/-
Dilip Raosaheb Deshmukh
Judge
29.9.2005

Anjani